

BRADFORD K. NEWMAN (SB# 178902) bradfordnewman@paulhastings.com
SHANNON S. SEVEY (SB# 229319) shannonsevey@paulhastings.com
PAUL, HASTINGS, JANOFSKY & WALKER LLP
Five Palo Alto Square
Sixth Floor
Palo Alto, CA 94306-2155
Telephone: (650) 320-1800
Facsimile: (650) 320-1900

Attorneys for Plaintiff
ARCSOFT INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARCSOFT INC.,

Plaintiff,

vs.

PAUL FRIEDMAN,

Defendant.

CASE NO. C07-03512 SC

**[PROPOSED] ORDER GRANTING A
PRELIMINARY INJUNCTION, SEIZURE
OF EVIDENCE, CONTINUED EVIDENCE
PRESERVATION, EXPEDITED
DISCOVERY, AND RETURN OF BOND,
AND**

**ORDER FINDING FRIEDMAN IN
CONTEMPT AND GRANTING
SANCTIONS**

1 The Court, having considered the argument of Plaintiff ArcSoft Inc.'s ("ArcSoft") counsel and
2 the papers submitted in support of its *ex parte* Application for Preliminary Injunction, Seizure of
3 Evidence, Continued Evidence Preservation Order, Expedited Discovery Order, Sanctions, And
4 Order To Show Cause Regarding Contempt Of Court, and for good cause shown,

5
6 **PRELIMINARY INJUNCTION**

7 **THE COURT HEREBY FINDS:**

8 Based on the evidence submitted, the Court finds that if the following relief is not issued, and if
9 Friedman is not enjoined, restrained and directed as follows, ArcSoft faces the threat of imminent
10 and irreparable injury arising out of the potential destruction of evidence. Now, therefore,

11 **IT IS HEREBY ORDERED:**

12 (1) That Defendant Paul Friedman ("Friedman"), his agents, and all those acting in aid
13 and concert with him are immediately enjoined from accessing, using, or disclosing to anyone
14 any ArcSoft information that is in his current possession, custody, or control, and/or that he
15 retained after being terminated by ArcSoft;

16 (2) That, within three calendar days of the date of this Order, Friedman shall return to
17 counsel for ArcSoft all information, data, or documents in his possession, custody, or control that
18 he accessed or acquired, in whole or in part, in connection with his employment with ArcSoft,
19 including, without limitation, the electronic data identified in response to Paragraph 3, below;

20 (3) That, within three calendar days of the date of this Order, Friedman shall identify
21 in a written statement made under penalty of perjury and delivered to counsel for ArcSoft each
22 and every file and piece of electronic data (by name, hash marks, and any other identifying
23 means) he accessed, removed, and/or copied from the ArcSoft laptop he retained following the
24 termination of his employment ("Laptop"), as well as the current location of all such data;

25 (4) That, within three calendar days of the date of this Order, Friedman shall identify
26 in a written statement made under penalty of perjury with specificity (including the name of the
27 program, the manufacturer, and the version number), and delivered to counsel for ArcSoft, the
28 particular type of wiping program he used to delete data off of the ArcSoft Laptop, at what

1 precise date and time he used this wiping program, and the precise steps he took to execute the
2 program's deletion function;

3 (5) That, within three calendar days of the date of this Order, Friedman shall identify
4 in a written statement made under penalty of perjury and delivered to counsel for ArcSoft all
5 Electronic Storage Devices (including but not limited to home computers, thumb drives, compact
6 discs or DVDs, hard drives, private email accounts (including Internet-based email accounts), and
7 other media capable of storing electronic data) in his possession, custody and control and/or to
8 which he has had access from January 1, 2007 to the present, to the extent he has not already done
9 so, and shall make such Electronic Storage Devices available to a third party forensic expert
10 retained by ArcSoft, so that the third party expert can forensically image (on a byte by byte basis
11 that includes slack and unallocated spaces of the Electronic Storage Devices) and preserve the
12 data on these Electronic Storage Devices for inspection;

13 (6) That, within three calendar days of the date of this Order, Friedman shall identify
14 in a written statement made under penalty of perjury and delivered to counsel for ArcSoft, (A) all
15 persons (including himself and any attorney, whether or not such attorney be an immediate family
16 member or relative) who have been given access to any ArcSoft property (including the data
17 identified in Paragraph 3, above), (B) when such access occurred, and (C) what use was made of
18 such data by the identified persons.

19 (7) This Preliminary Injunction shall remain in effect until the completion of a trial on
20 the merits of this action or until permanent injunctive relief is otherwise granted.

21
22 **ORDER TO SEIZE ELECTRONIC STORAGE DEVICES**

23 **THE COURT HEREBY FINDS:**

24 Based on Friedman's failure to produce all Electronic Storage Devices governed by the
25 Temporary Restraining Order entered by the Court on July 6, 2007 ("TRO") to the third party
26 forensic expert retained by ArcSoft for imaging, the Federal Marshall is hereby instructed to
27 immediately travel to the primary residence and any additional temporary or permanent
28 residences of Friedman, seize all Electronic Storage Devices found therein, and deliver the seized

1 Electronic Storage Devices to the third party forensic expert retained by ArcSoft for imaging.
 2 Friedman is ordered to identify under penalty of perjury, in a written statement submitted to the
 3 Federal Marshall and ArcSoft's counsel, the addresses of all such residences, and to take all steps
 4 necessary to allow the Federal Marshall access to such residences. Friedman is further ordered to
 5 refrain from accessing or instructing or allowing any other person to access any Electronic
 6 Storage Devices in his possession, custody, or control before they are seized by the Federal
 7 Marshall.

8 9 **EVIDENCE PRESERVATION ORDER**

10 **IT IS FURTHER ORDERED THAT:**

11 (1) That Friedman continue to be restrained, enjoined and prohibited from destroying,
 12 altering, erasing, or otherwise modifying, or causing or permitting anyone else to destroy, alter,
 13 erase, or otherwise modify, any evidence relating to this action, including, but not limited to:

14 (A) Any and all data in computerized files stored or located on computers, USB
 15 drives, external hard drives, or any other Electronic Storage Device or email account within the
 16 possession, custody or control of Friedman, including, without limitation, any and all documents
 17 relating to ArcSoft and/or its confidential and/or proprietary information;

18 (B) Any and all documents maintained in hard copy form relating to ArcSoft
 19 and/or its confidential and/or proprietary information; and

20 (C) Computers, floppy diskettes, USB Flash Drives, external hard drives, or
 21 other external storage devices within the possession, custody or control of Friedman.

22 23 **ORDER GRANTING EXPEDITED DISCOVERY**

24 **IT IS FURTHER ORDERED THAT:**

25 (1) ArcSoft may immediately serve upon Friedman the following written discovery:
 26 fifteen (15) special interrogatories and fifteen (15) document requests. Friedman is ordered to
 27 provide full, complete, and FRCP-compliant written responses to this discovery, and to produce
 28 all documents that are responsive to ArcSoft's document requests, within five (5) calendar days of

1 the date of service. ArcSoft shall serve its discovery requests on Friedman via PDF email
2 delivery, and such requests shall be deemed served immediately upon receipt.

3 (2) ArcSoft may immediately serve upon Friedman notice of a deposition of him.
4 Friedman is ORDERED to appear in this judicial district for deposition at a time mutually
5 convenient to the parties and their counsel, but in no case later than six (6) calendar days from the
6 date of service of the deposition notice. Service shall be made and deemed complete in the
7 manner described in Paragraph 1, above.

8
9 **ORDER FINDING FRIEDMAN IN CONTEMPT OF COURT AND**
10 **GRANTING SANCTIONS AGAINST FRIEDMAN**
11 **THE COURT HEREBY FINDS:**

12 Based on the evidence submitted, the Court finds that Friedman, after being personally served
13 with the TRO and all pleadings filed in this action on July 6, 2007:

14 1. Caused the unavailability and/or altering or destruction of the contents of
15 Electronic Storage Devices by, on Saturday July 7, 2007, personally sending a computer
16 governed by the TRO to Hewlett Packard;

17 2. Refused to describe under penalty of perjury, as mandated by the TRO, how he
18 "defragmented" the ArcSoft laptop computer during the time it was in his possession;

19 3. Refused to describe under penalty of perjury, as mandated by the TRO, his own
20 access to ArcSoft data he possessed following the termination of his employment, and failed to
21 identify under penalty of perjury the access he provided to others;

22 4. Connected an external storage device containing ArcSoft data to a computer to
23 which he had access and attempted to access ArcSoft data;

24 5. Admitted that he possesses additional Electronic Storage Devices which he refused
25 to produce for forensic imaging;

26 6. Delayed access by the third party forensic expert retained by ArcSoft to his
27 personal email account which he admits contains stored ArcSoft data, to allow the Court-ordered
28 forensic imaging; and

7. The above constitutes violations of the TRO which the Court deems to be willful, and constitutes contempt of this Court;

Now, therefore,

IT IS FURTHER ORDERED THAT:

Pursuant to the Court's inherent authority to enforce its own order and control its proceedings, Friedman shall pay sanctions in the amount of \$_____ to ArcSoft within five (5) calendar days of the date of this Order, and shall pay to the Court sanctions in the amount of \$_____ per day until such time as the Court determines Friedman is in full compliance with the TRO or that ArcSoft, by and through its counsel, no longer disputes Friedman's full and complete compliance with the TRO.

ORDER REGARDING RETURN OF BOND POSTED BY ARCSOFT

IT IS FURTHER ORDERED THAT:

Based on the evidence presented to the Court of Friedman's failure to comply with the July 6, 2007 Order of the Court, the Court finds that good cause existed for ArcSoft to seek a temporary restraining order and preliminary injunctive relief. Therefore, the clerk of the United States District Court, Northern Division is hereby ordered to return the bond of Twenty-Five Thousand Dollars (\$25,000) to ArcSoft within fifteen (15) court days of the date of this Order.

IT IS SO ORDERED.

Entered this day of July, 2007.

The Honorable Samuel Conti
United States District Court Judge